

**COURT OF COMMON PLEAS
PROBATE DIVISION
MIAMI COUNTY, OHIO**

**AMENDED LOCAL COURT RULES
EFFECTIVE: November 21, 2005**

Local Rule 53.1 HOURS OF THE COURT

The Probate Court and its offices shall be open for the transaction of business from 8:00 o'clock a.m. to 4:00 o'clock p.m. Monday through Friday. The Probate Court shall be closed on Saturday, Sunday and Legal holidays.

Local Rule 55.1 EXAMINATION OF COURT RECORD

(A) Copies of any open records may be obtained at the rate set and posted by the Court.

Local Rule 57.1 FILINGS AND JUDGMENT ENTRIES

(A) All forms and attachments must be typed or legibly printed in black ink. Documents not in compliance with this rule shall not be accepted for filing.

(B) The original filing of any proceeding shall contain the attorney's Supreme Court registration number; otherwise, the filing may be refused.

Local Rule 58.1 DEPOSIT FOR COURT COSTS

A deposit for court costs shall be paid at the time a case is opened. Costs incurred thereafter must be paid when an account is filed or before the case is closed. In cases in which an account is not required, costs shall be paid before the case is closed.

Costs incurred by parties other than the fiduciary shall be paid at the time of filing.

A schedule of costs is available at the Court.

Local Rule 60.1 APPLICATION FOR LETTERS OF AUTHORITY TO ADMINISTER ESTATE AND NOTICE OF APPOINTMENT

(A) When a next of kin takes per stirpes, the name of the deceased parent and the parent's relationship to the decedent shall be stated on the standard probate form 1.0.

(B) Service of notice pursuant to C.R. 73 (E) shall be without Court intervention.

(C) No more than three (3) fiduciaries will be appointed unless there are special circumstances which shall be set forth in an application.

Local Rule 61.1 APPRAISER'S AND INVENTORIES

(A) Appraiser fees shall be subject of allowance on application and shall be allowed on the value of the service rendered. For exceptions see guidelines.

(B) Valuations shall be in accordance with Federal Estate Tax regulations.

(C) There is no mandatory publication of Notice of the filing and hearing on the inventory pursuant to O.R.C. 2115.16. Fiduciaries or their attorneys may make written requests to the Court to publish Notice, which Notice shall be prepared by the fiduciary or the fiduciary's attorney and submitted with the request.

(D) Complete legal descriptions must be set forth in the inventory or attached thereto. Inventories must include the Auditor's parcel number. If an application for certificate of transfer or a sale of real estate contains a new or different legal description, the fiduciary or the fiduciary's attorney shall advise the court in writing of the new legal description and the reasons therefore.

Local Rule 64.1 ACCOUNTS

(A) Guardianship and trust account disbursements shall be identified by consecutive numbers, and all vouchers shall bear the corresponding number and shall be presented in the same consecutive order. All payments, that are not self-evident, shall identify the nature of the payment. Except as otherwise provided in 64.1(B) in all other accounts vouchers are not required.

(B) Printed statements of brokerage firms or regulated investment companies may be certified by the fiduciary in which case no vouchers shall be filed.

(C) The fiduciary or his attorney shall disclose to the Court in writing any changes in the beneficial interest due to death, attainment of specified age, or the occurrence of any other event, on or before the filing of the next succeeding account.

(D) If fiduciary fees are waived a completed and signed fiduciary fee schedule shall be filed with an account and marked "fees waived".

(E) If the time for filing an account has been extended to 13 months or other appropriate time for the reasons set forth in R.C. 2109.301(B) the filing of a thirteen month status report shall be waived. In cases in which the fiduciary has not been discharged after filing a final account, a status report shall be filed after a fiduciary has remained in place for 1 year after the filing of the final account.

Local Rule 66.1 GUARDIANSHIP

(A) The guardian shall file with the Court all Wills of the ward.

(B) Matters involving custody, visitation and/or support of a minor shall be filed in Juvenile Court.

Local Rule 68.1 SETTLEMENT OF INJURY CLAIMS OF MINOR

In all settlements, if other persons are involved, then the known amounts of the other settlements must be submitted with the application.

If some of the settlement is by deferred payments, there shall be filed with the proposed settlement an actuary's statement of the present value of the stated settlement, which shall be based upon prevailing current interest rates.

Local Rule 70.1 SETTLEMENT OF WRONGFUL DEATH AND SURVIVAL CLAIMS

(A) In all settlements if other persons are involved, then the known amounts of the other settlements must be submitted with the application

(B) If some of the settlement is by deferred payments, there shall be filed with the proposed settlement an actuary's statement of the present value of the stated settlement, which shall be based upon prevailing current interest rates.

(C) If attorney fees are not deferred, fees will be allowed on present value, and fees may not substantially exhaust up front cash payments. Copies of all insurance policies must be filed with the Court, and all policies of primary insurers must be with A+ rated insurance companies.

(D) Contingent fee contracts must be approved by the Court and a copy filed. Under no circumstance shall the net amount received by the client be less than the fee of the attorney.

Local Rule 71.1 COUNSEL FEES

(A) A computation of fees conforming to the guidelines shall be signed by the attorney and the fiduciary and attached as an exhibit with the final account or the application for allowance of partial payment.

(B) All attorney fees shall be based on the reasonable value thereof and shall be the subject of allowance on application by the fiduciary. Where application for attorneys' fees is required, such application shall separately list attorney time, non-attorney time and hourly rates for each.

(C) Counsel fees in accordance with the guidelines on file in the Court will be prima facie reasonable and be approved by the Court. The guidelines are not to be considered as minimum or maximum fees to be charged. If application of the guidelines results in an injustice, the Court may review the fees on its own motion or upon exception to an account.

Values upon which fees are computed shall be the values as finally determined by taxing authorities. When the alternate valuation of the estate is chosen, attorney fees should be computed on the alternate valuation.

When the qualified farm property valuation is used, attorney fees should be computed on appraised (fair market) value.

(D) Counsel fees under the guideline include the following services to be rendered by the attorney or his office staff:

1. Preparing and filing all documents required by law for Probate Court administration or release of administration as appropriate.
2. Assisting the fiduciary in the resolution of all just debts and obligations of the decedent including filing and processing of health insurance.
3. Providing necessary tax releases and other documentation necessary for the transfer of non-probate assets to the designated beneficiaries.
4. Preparing the decedent's final income tax return unless the executor or other fiduciary desires preparation by an outside tax return preparer. An outside preparer may be used if circumstances dictate (i.e. complex tax issues or decedent was conducting a business).
5. Preparing the estate income tax returns during the administration of the estate including the final 1041, passing on all appropriate deductions to the beneficiaries through providing them a Schedule K-1. An outside preparer may be used if circumstances dictate (i.e. complex tax issues or decedent was conducting a business).
6. Preparing any necessary Ohio or Federal Estate Tax returns and related forms.
7. Assisting the fiduciary in the distribution of all assets in accordance with decedent's will or law including preparation and filing of certificates of transfer of real estate, and preparation of documents effecting the transfer of intangible personal property.
8. Preparing and recording an affidavit transferring joint and survivorship real estate or evidencing extinguishment of life estate.
9. Assisting the fiduciary in communicating important aspects of the estate administration to beneficiaries.

(E) The Court recognizes that if there are complex issues involving the administration of the estate, litigation, or complex Ohio or Federal Estate Tax issues involving extensive research and preparation of complex returns and extended audits, that the attorney may be entitled to extraordinary fees. However, matters involving routine issues are to be handled within the ordinary fees guidelines.

(F) The following out-of-pocket expenses should be considered overhead of a law firm not ordinarily recoverable for separate charges against the estate: photocopying expenses, and fax transmissions within the United States, and automobile mileage within the State of Ohio. The Court will consider allowing reimbursement of extraordinary out-of-pocket expenses upon application.

Local Rule 73.1 GUARDIAN'S COMPENSATION

(A) See guidelines on file in Court.

(B) When an attorney is serving as sole guardian, and the attorney or his or her i) partner, ii) associate, iii) attorney employed by the same corporation, iv) attorney who is a member of the same association of independent attorneys as the guardian, or v) attorney sharing office space with the guardian is hired to represent the guardian/attorney, then in such cases if the guardian/attorney imposes a charge for record keeping by a paralegal or secretary in the office, such charge shall be deducted from the guardian's compensation. In a case where a non-attorney guardian requests the attorney's office to manage the record keeping and maintain the checkbook, a separate fee will be allowed for this service and for preparing the account at the going paralegal rate.

(C) In case of the appointment of co-fiduciaries, the division of fees should be pro-rata between fiduciaries unless agreement is noted on the application at the time of appointment, or as otherwise ordered by the Court.

Local Rule 74.1 TRUSTEE'S COMPENSATION

(A) See guidelines on file in Court.

(B) When an attorney is serving as sole trustee, and the attorney or his or her i) partner, ii) associate, iii) attorney employed by the same corporation, iv) attorney who is a member of the same association of independent attorneys as the trustee, or v) attorney sharing office space with the trustee is hired to represent the trustee/attorney, then in such cases if the trustee/attorney imposes a charge for record keeping by a paralegal or secretary in the office, such charge shall be deducted from the trustee's compensation. In a case where a non-attorney trustee requests the attorney's office to manage the record keeping and maintain the checkbook, a separate fee will be allowed for this service and for preparing the account at the going paralegal rate.

(C) In case of the appointment of co-fiduciaries, the division of fees should be pro-rata between fiduciaries unless agreement is noted on the application at the time of appointment, or as Otherwise ordered by the Court.

(D) Fees for corporate trustees are exempted from the fee guidelines set out for guardians and trustees. Their fees however will be subject to review as to reasonableness on application of any interested party. A schedule of current corporate trustee fees shall accompany each account.

Local Rule 75.1 FIDUCIARY BOND

(A) Personal property ordered impounded pursuant to R.C.2109.13 will be released only on sufficient bond or by direct disbursement by the depository pursuant to Court order. A reasonable fee will be allowed the depository for such services.

(B) The fiduciary shall provide the Court with a statement of the property on hand and the current bond, when release to fiduciary from impoundment is sought.

(C) A bond sufficiency form shall accompany each partial Court accounting.

Local Rule 75.2 MOTION PRACTICE

(A) All motions and responses shall be submitted in writing with the proper case heading and number accompanied by a memorandum on the related law when appropriate.

(B) All motions shall be ruled on by the Court on pleadings without hearing unless an oral hearing is requested by a party or the Court; and granted by the Court.

(C) Court entries presented for approval shall specify with particularity the motion or matter to which it applies.

Local Rule 75.3 RELEASE FROM ADMINISTRATION

(A) See guidelines on file in court.

Local Rule 75.4 SERVICE BY PUBLICATION

(A) In any action where service is to be made by publication as authorized by Rule 4.4 of the Civil Rules, the attorney filing the necessary affidavit shall at the same time furnish to the clerk the form of notice of publication which is to be published and the affidavit shall set out the names and addresses of all parties for whom notice by publication is sought.

(B) In any action when it appears by affidavit that the name and residence of a necessary party are unknown and the Court is required to make an order respecting the publication of notice pursuant to R.C. 2703.24, the attorney filing the affidavit shall prepare the order for the court and at the same time furnish to the clerk the form of notice of publication which is to be published.

Local Rule 75.5 PRIVATE ADOPTIONS

The mother must appear in Probate Court not sooner than 72 hours after the birth of the child. If this causes delay in prompt release of the child to the adopting parents, the Court will require that the child be placed in a licensed foster home. The attorney representing the placing mother must represent that this has been accomplished, must furnish the foster parent's name and address, and must advise by what agency the foster parent is licensed. The per diem foster care charges must be made known to the court. In lieu of this procedure the child may be placed with a relative of the placing mother. The adopting parents must place sufficient funds in their attorney's trust account to cover all anticipated foster care expense, birth expenses, and investigation fees, as those expenses become known, or present receipts that these costs have been paid. An affidavit of all amounts paid by the adopting parents and received on behalf of the placing mother, and any other amounts paid their attorneys, must be filed by each in the placement procedure.

If the mother incurs abnormal expenses directly connected with the birth of the child, or if abnormal child care expenses become known a satisfactory plan to meet these expenses must be presented or the petition will be dismissed.

The placing mother at the time of her application must sign a release of medical information concerning the child's birth and pre-natal history.

Local Rule 75.6 EXHIBITS, DEPOSITIONS AND TRANSCRIPTS

At the conclusion of a case, including times for direct appeal, the court may destroy exhibits, depositions or transcripts if party that tendered the exhibits, depositions or transcripts has been notified and sixty (60) days have elapsed.

Local Rule 78.3 JURY DEMANDS

An initial deposit of \$1000.00 for the first day of trial is required when a demand for a jury trial is filed. At an initial pre-trial conference to be held no later than four weeks before trial, the Court and parties shall set the number of days for trial. An additional deposit of \$500.00 is to be deposited for each additional day of trial. The additional deposit is due 7 days after the first pre-trial conference, but in no event shall it be paid less than 3 weeks before the first day of trial.

Local Rule 100 SPECIAL NEEDS TRUSTS

The Trustee of a Special Needs Trust shall apply to the Court for prior approval of all expenditures, and shall list the date of Court approval with all disbursements on accounts.

Local Rule 101 DELAYED BIRTH REGISTRATIONS

All applicants for a delayed birth registration shall provide the Court with a "no record letter" issued from Vital Statistics at the time of filing.

Fee Guidelines for Attorneys

Fees charged by attorneys in accordance with the following guidelines will be prima facie reasonable.

Values upon which fees are computed will be finally determined by taxing authorities.

For full administration or release from administration if debts exceed valuation of proceeds from sale of personal property, fees on personal property shall be computed on the amount of debts and legacies paid through the estate and costs of administration (except attorneys fees on contributed portion) plus value of personalty distributed or exempted in kind. This provision does not apply to the extent that real estate sale proceeds are applied to payment of debts and legacies. If joint and survivorship property or other non-probate assets are advanced to pay debts or legacies, the fees on such advanced property shall be reduced proportionately by the amount so used.

A. Administration of decedents' estates ... including estates relieved from administration:

1. On all personal property administered (including proceeds of sale of real estate under power of will or by consent pursuant to R.C. 2107.01.)

On first	\$ 75,000	4%
On next	\$275,000	3%
On balance		2%

2. On all non-probate property i.) included in the gross estate for Federal or Ohio Estate tax purposes or ii.) includible in determining if a Federal or Ohio Estate Tax return is required
.....1%

(This amount would be limited to one-half joint and survivorship property where the surviving spouse is the co-owner)

3. On life insurance proceeds payable to a named beneficiary and included in Federal Estate Tax return
.....1%

4. On all real estate transferred without sale (based on value as finally determined by taxing authorities)
.....2%

5. On land sales proceedings including election to take by surviving spouse at appraised value.

The value of the property on proceeds of sale.

On first	\$ 25,000	6%
On next	\$ 25,000	5%
On next	\$ 25,000	3%
On balance		2%

When employment does not cover complete administration fees will be allowed on application of fiduciary based upon the reasonable value thereof.

7. When an attorney is the sole fiduciary, and that attorney, or his partner, associate, attorney employed by the same corporation, attorney who is a member of the same association of independent attorneys as the fiduciary or attorney sharing office space with the fiduciary is hired to represent the fiduciary, the attorneys' fees shall be deemed reasonable if equal to 1/2 of what would otherwise be allowed for ordinary services. This rule shall not prevent an attorney from applying for extraordinary fees.

8. Minimum attorney fees for all estates shall be \$300.

B. Extraordinary fees

Fees for extraordinary services of the attorney may be allowed on application by the fiduciary, or by the attorney on notice to all interested parties. The attorney will be required to support the reasonableness of the total amount of attorney fees

C. Trust and Guardianship Fees for Attorneys

All attorney fees shall be based on the reasonable value thereof and shall be subject of allowance on application by fiduciary.

Fees charged by attorneys in accordance with the following guidelines will be prima facie reasonable. Fees on land sales computed in accordance with the following guidelines will be prima facie reasonable.

In land sale proceedings, the value of the property on proceeds of sale.

On first	\$ 25,000	6%
On next	\$ 25,000	5%
On next	\$ 25,000	3%
On balance		2%

Fee Schedule for Non-corporate Trustees and Guardians

- A. No separate fees for income from personal property.
- B. On income from real estate – 11% of gross income during the accounting period when the trust or guardian actually manages the real estate and collects the rent.
- C. On all other non-real estate assets of the trust or guardianship, an annual fee would be calculated as follows:

.75% on the first \$1,000,000 of assets
.50% on the next \$1,000,000 of assets
.25% on the assets over \$2,000,000

- D. A distribution fee on the corpus, both real and personal, of 1% based upon the reasonable market value of the property at the time of distribution.
- E. Minimum of \$50 per accounting.
- F. Land Sale proceedings:

\$1,000	6%
On excess of \$1,000 to \$5,000	4%
On excess of \$5,000	2%

When the foregoing schedule of fees is followed by a trustee or guardian, or when the fees do not exceed the amounts provided in the foregoing schedule, no application shall be necessary to the court for the determination of the fee of the trustee or the guardian, but the fee shall be shown in the account.

Costs for publications, appraisers and notary fees shall not be taxed as costs.

Fees for Appraisers: Fees of \$200 or less per parcel may be paid without application